

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2013-CP-00159-COA**

**WILLIE LEE MADDEN JR. A/K/A WILLIE L.  
MADDEN JR.**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

DATE OF JUDGMENT:	08/03/2012
TRIAL JUDGE:	HON. JOHN C. GARGIULO
COURT FROM WHICH APPEALED:	HARRISON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	WILLIE LEE MADDEN JR. (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	DENIED MOTION FOR POST- CONVICTION RELIEF
DISPOSITION:	AFFIRMED - 05/13/2014
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE LEE, C.J., BARNES AND ISHEE, JJ.**

**ISHEE, J., FOR THE COURT:**

¶1. In 2004, Willie Lee Madden Jr. pleaded guilty in the Harrison County Circuit Court to transfer of cocaine. He was sentenced as a habitual offender to fifteen years in the custody of the Mississippi Department of Corrections (MDOC). Madden has filed three motions for post-conviction relief (PCR). All three PCR motions were denied or dismissed by the circuit court and subsequently appealed. We have affirmed the denial or dismissal of each prior PCR motion.<sup>1</sup> Madden then filed the instant motion under Mississippi Rule of Civil

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<sup>1</sup> See *Madden v. State*, 75 So. 3d 1130, 1132 (¶12) (Miss. Ct. App. 2011); *Madden v. State*, 52 So. 3d 411, 413 (¶10) (Miss. Ct. App. 2010); *Madden v. State*, 991 So. 2d 1231,

Procedure 60(b)(6) in July 2012. The circuit court denied that motion. Madden appeals. Finding no error, we affirm.

### STATEMENT OF FACTS AND PROCEDURAL HISTORY

¶2. After pleading guilty to transfer of cocaine in 2004, Madden filed a PCR motion claiming his guilty plea was involuntarily and unintelligently made, that a factual basis did not exist for his guilty plea, that the State did not prove that he was a habitual offender, and that his attorney rendered ineffective assistance of counsel. The circuit court denied the PCR motion, and we affirmed the circuit court's judgment in 2008. *Madden*, 991 So. 2d at 1238 (¶35).

¶3. Madden filed a second PCR motion in February 2009. The circuit court dismissed the motion as a successive writ and as barred by the three-year statute of limitations. Madden appealed and we affirmed the circuit court's judgment in June 2010. *Madden*, 52 So. 3d at 413 (¶10). Madden filed a third PCR motion in July 2010. The circuit court dismissed the motion. On appeal, we held that the circuit court was correct in dismissing the PCR motion as untimely filed and procedurally barred. *Madden*, 75 So. 3d 1131 (¶7). Nonetheless, we briefly addressed the merits of Madden's claim that he was improperly sentenced as a habitual offender. *Id.* at 1132 (¶10). We held that Madden's claim had been waived as a result of his guilty plea. *Id.*

¶4. In July 2012, Madden filed a motion pursuant to Mississippi Rule of Civil Procedure 60(b)(6). The circuit court treated the motion as a PCR motion. The circuit court then

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1238 (¶35) (Miss. Ct. App. 2008).

considered Madden's claim that he was improperly sentenced as a habitual offender and determined that Madden's sentence was proper. Madden now appeals the circuit court's denial of his most recent PCR motion.

### **DISCUSSION**

¶5. Madden's instant appeal centers on his motion pursuant to Rule 60(b)(6). Rule 60(b)(6) states: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . any . . . reason justifying relief from the judgment." Madden asserts that he was improperly sentenced as a habitual offender due to plea-bargain negotiations. He claims the negotiations resulted in the State agreeing to remove an enhanced-penalty portion of Madden's indictment. Madden further argues that it was his understanding that the enhanced-penalty portion being referenced was actually his habitual-offender status.

¶6. The circuit court concluded that the State did, in fact, remove an enhanced-penalty portion of Madden's indictment pursuant to the plea bargain, but that Madden's habitual-offender status was not part of the plea-bargain agreement. We concur.

¶7. Nonetheless, Madden's motion, though couched in terms of the Mississippi Rules of Civil Procedure, is a PCR motion pursuant to Mississippi Code Annotated section 99-39-5(1) (Supp. 2013). Hence, his fourth PCR motion is both without merit and procedurally barred as untimely and as a successive writ. *See id.* Miss. Code Ann. § 99-39-23(6) (Supp. 2013). Accordingly, we affirm the circuit court's judgment.

**¶8. THE JUDGMENT OF THE HARRISON COUNTY CIRCUIT COURT DENYING THE MOTION FOR POST-CONVICTION RELIEF IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HARRISON COUNTY.**

**LEE, C.J., IRVING AND GRIFFIS, P.JJ., BARNES, ROBERTS, CARLTON,  
MAXWELL, FAIR AND JAMES, JJ., CONCUR.**